

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

FEBRUARY 18, 1997

NOTICE

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62(1), STATS.

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 96-2463-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

JAMES E. PAGEL,

Plaintiff-Appellant,

v.

SECURITY HEALTH PLAN,

Defendant-Respondent.

APPEAL from an order of the circuit court for Marathon County:
RAYMOND F. THUMS, Judge. *Affirmed.*

Before Cane, P.J., LaRocque and Myse, JJ.

CANE, P.J. James Pagel appeals an order granting summary judgment to Security Health Plan because its health insurance contract with Pagel did not provide coverage for the medical treatment he received in Canada.¹ Pagel argues that summary judgment was inappropriate because material facts were in dispute as to whether his medical condition constituted a covered "emergency" under the terms of Security's policy language. In the

¹ This is an expedited appeal under RULE 809.17, STATS.

alternative, Pagel asserts that summary judgment should have been granted to him rather than Security.

Security asserts that summary judgment was appropriate because the undisputed facts demonstrate that the medical treatment at issue was not covered under the contract. We agree with Security and affirm the order.

Pagel obtained group health insurance through Security Health Plan in 1991, under the terms of Security's "master contract" and "member handbook." On October 14, 1994, Pagel went to see Dr. Mark Szmanda, a Wausau neurologist, for a severe headache and stroke-like syndrome. Szmanda was a plan provider for Security. He diagnosed Pagel with a basilar tip aneurysm on November 2, 1994. Szmanda referred Pagel to University Hospital in Ontario, Canada, for treatment because he believed that University Hospital was experienced with this type of surgery, and that treatment there would be less expensive than treatment locally.

Pagel sought and subsequently received treatment for the aneurysm at the University Hospital, which was not a plan provider for Security. When it learned on November 3, 1994, of Pagel's decision to be treated in Canada, Security informed him that their policy would not cover the services rendered in Canada, and made an appointment for Pagel with plan provider Dr. Arturo Camacho, a neurosurgeon at the Marshfield Clinic.

However, on November 4, 1994, Pagel flew to Ontario without seeing Camacho and without written approval from Security for treatment in Canada. Pagel was admitted to the hospital in Ontario on November 4, discharged and readmitted on November 7, at which time surgery was performed.

Security sent a letter dated November 8 to Pagel, notifying him that it was denying coverage for his treatment at University Hospital. Although Pagel asserts that he first learned of Security's denial of coverage when he received the letter upon his return from Canada, Security asserts that it notified Pagel on November 3 that it would not cover his expenses at University Hospital.

Pagel sued Security to recover \$16,280.65 in surgical and related medical expenses from University Hospital. The court granted Security's motion for summary judgment, deciding that Pagel's treatment was not covered for the following reasons: Pagel did not follow the prerequisite procedures to receiving treatment from a non-plan physician; Security was denied the opportunity to treat Pagel through its member physicians; Pagel's condition was not an "emergency" as defined in the contract; and, even if it were an "emergency," there would be no coverage for his nonprovider treatment because his medical condition arose within the service area. Pagel now appeals the summary judgment order.

We review summary judgments de novo, and will affirm if the record shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. *See St. John's Home v. Continental Cas. Co.*, 147 Wis.2d 764, 781-82, 434 N.W.2d 112, 119 (Ct. App. 1988). The construction of an insurance policy presents a question of law, which we review independently of the trial court. *American States Ins. Co. v. Skrobis Painting & Decor., Inc.*, 182 Wis.2d 445, 450, 513 N.W.2d 695, 697 (Ct. App. 1994).

Insurance policies are reviewed pursuant to the rules of contract construction. *School Dist. v. Wausau Ins. Cos.*, 170 Wis.2d 347, 367, 488 N.W.2d 82, 88-89 (1992). We must construe the words of the policy provisions to give effect to the parties' intentions, and we must interpret the policy terms as would a reasonable person in the position of the insured. *See id.* "However, when the terms of the policy are unambiguous and plain on their face, the policy should not be rewritten to include insurance coverage not agreed to by the parties and for which it was not paid." *Id.* at 367, 488 N.W.2d at 89.

The relevant contract provisions are the following:

1. Regular Services. ... In order for hospital and other benefits to be covered, a Plan Physician must manage the care of the Enrollee, unless prior written approval is received from the Medical Director of Plan....
2. Emergency Services in Plan Service Area.
....
If Enrollee's condition is of sufficient severity that traveling to a Plan Hospital or the office of a Plan Physician would endanger his or her health, he or she should go to the nearest medical facility.
3. Emergency Services Outside Plan Service Area. Care received in Emergency Conditions outside the Plan Service Area is covered. Enrollee should go to the nearest physician or hospital for care *if Emergency Conditions arise while he or she is outside the Plan Service Area*. Enrollee is then required to (a) notify Plan of the condition and treatment as soon as possible, (b) receive only that treatment which is reasonably necessary under the conditions, and (c) return to the Plan Service Area for follow-up treatment. (Emphasis added).

It is undisputed that Pagel did not obtain the requisite authorized referral from Security for his treatment in Canada, and University Hospital is a non-plan provider located outside Security's service area. We therefore conclude that the first and second contract provisions above do not apply.

Pagel argues that material issues of fact exist as to whether his medical condition constituted a covered "emergency" under the terms of Security's policy.² Even if we assume, without deciding, that Pagel's condition

² "Emergency Conditions" are defined as follows:

Conditions under which medical services are required as a result of the sudden onset of illness or accidental bodily injury and cannot reasonably

was an emergency under the terms of the contract, we conclude that the policy did not cover his medical expenses because his medical condition did not arise outside Security's service area.³

(..continued)

be obtained from a Plan Provider because of medical necessity and not because of the convenience of the Enrollee. Medical necessity shall not be considered to exist unless 1) the Enrollee's life or health would have been jeopardized if the Enrollee had obtained required services from a Plan Provider, or 2) the decision to obtain required services from other than a Plan Provider was not made by an adult family member who was capable of rational, independent judgment concerning the source of medical services.

Security also issued a handbook to its insureds, describing its emergency policies as follows:

Medical emergencies

Emergency care is covered by Greater Marshfield Health Plan, anywhere, anytime.

An emergency is defined as the sudden onset of a condition which requires medical care immediately. It is important to note that you and your emergency provider must follow Greater Marshfield Health Plan guidelines in order to qualify for coverage of emergency costs....

Life-threatening emergencies

If a life-threatening emergency occurs, go directly to the nearest hospital emergency room for care....

Out-of-area emergency

If you are away from home when an emergency arises, seek care at the nearest medical center....

³ Because we assume that Pagel's condition was an emergency, we do not address his argument that medical necessity sufficient to meet the definition of emergency conditions existed because his mental state of mind rendered him incapable of making a rational decision about his treatment in Canada.

The plain meaning of Security's policy effectively denies coverage for costs associated with emergency medical conditions arising within the plan's service area but treated outside the plan's service area. Pagel's condition was first treated and diagnosed by Szmanda in Wausau. It was after this diagnosis that Pagel elected to travel to University Hospital in Canada for further treatment and surgery. Therefore his condition did not arise outside the service area, and is not covered under Security's policy.⁴

We conclude that there were no disputed issues of material fact as to whether Security's policy covered Pagel's medical expenses. Therefore, the court properly granted summary judgment to Security.

By the Court. — Order affirmed.

Not recommended for publication in the official reports.

⁴ We do not address Pagel's argument that summary judgment should have been granted to him because we have concluded that the court properly awarded summary judgment to Security.